

STATE OF SOUTH CAROLINA

(Caption of Case)

Application of United Utility Companies, Inc.
for Adjustment of Rates and Charges and
Modifications to Certain Terms and Conditions
for the Provision of Water and Sewer Service

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2009 - 479 - WS

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda expeditiously

☒ Other:

INDUSTRY (Check one)

- ☐ Electric
☐ Electric/Gas
☐ Electric/Telecommunications
☐ Electric/Water
☐ Electric/Water/Telecom.
☐ Electric/Water/Sewer
☐ Gas
☐ Railroad
☐ Sewer
☐ Telecommunications
☐ Transportation
☐ Water
☒ Water/Sewer
☐ Administrative Matter
☐ Other:

NATURE OF ACTION (Check all that apply)

- | | | |
|--|--|--|
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input checked="" type="checkbox"/> Response |
| <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form

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February 25, 2010

VIA HAND DELIVERY

The Honorable Jocelyn G. Boyd
Interim Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Application of United Utility Companies, Inc. for adjustment of rates and charges and modifications to certain terms and conditions for the provision of water and sewer service. Docket No.: 2009-479-WS

Dear Ms. Boyd:

Enclosed for filing please find the original and one (1) copy of United Utility Companies, Inc.'s Reply to North Greenville University's Response to Applicant's Motion to Strike Portions of Petition to Intervene.

By copy of this letter, I am serving all parties of record in this proceeding with a copy of same and enclose a certificate of service to that effect. I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning them to me via my courier.

If you have any questions, or if you need any additional information, please do not hesitate to contact us.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/cf
Enclosures

The Honorable Jocelyn G. Boyd

February 25, 2010

Page 2

cc: Nanette S. Edwards, Esquire
Duke K. McCall, Jr., Esquire
William H. Jordan, Esquire
Janet Marks

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2009-479-W/S

IN RE:

Application of United Utility Companies,
Inc. for adjustment of rates and charges
and modifications to certain terms
and conditions for the provision of
water and sewer service.

**REPLY TO NGU'S RESPONSE TO
APPLICANT'S MOTION TO STRIKE
PORTIONS OF PETITION TO
INTERVENE**

Applicant, United Utility Companies, Inc. ("Applicant" or "UUC"), submits the within reply to the February 19, 2010, Response ("Response") of North Greenville University ("NGU") to Applicant's motion to strike portions of NGU's Petition to Intervene ("Petition"). In that regard, the Applicant would respectfully show as follows.

I. NGU'S RENEWED CHALLENGE TO THE CONTRACT

NGU begins its response to UUC's motion to strike with an *ad hominem* attack stating that UUC's instant motion is substantially the same as its Motion to Dismiss a portion of NGU's Petition to Intervene filed in connection with Docket No. 2006-107-W/S. Although UUC is currently seeking to strike a portion of NGU's motion in the instant docket as opposed to dismissing a portion of their petition to intervene as it did previously, NGU is correct that UUC reasserts many of the same arguments as it did in 2006. This is so because NGU persistently continues to advance challenges to its contract with UUC despite numerous and repeated decisions by the Commission declining to readdress these well-settled issues. Therefore, UUC is compelled to similarly reassert defenses which it has made time and again.

In its Petition, NGU states that UUC's application for an adjustment in rates "violate the intent and spirit of the agreement between the Petitioner and United Utility..." [NGU Petition at 2, ¶ 7.] Paradoxically, NGU attaches as an exhibit to its Petition a copy of the July 9, 2001, contract which clearly and directly provides that UUC will charge for wastewater services "in accordance with Utility's rates, rules and regulations and conditions of service **from time to time on file with the Commission and then in effect.**" [NGU Petition, Exhibit A, at 5, ¶ 7(a), Emphasis supplied.] In its Response, NGU states that "UUC is incorrect when it asserts that NGU is seeking to assert a contractual entitlement to rates with UUC." [NGU Response at 2.] However, NGU then states that "UUC betrayed its agreement with NGU when it agreed not to raise rates in the immediate future." [NGU Response at 2-3.] It is difficult to discern the logic of alleging that UUC has violated the intent of the agreement while at the same time asserting that the contract has not been plead for that purpose.

UUC submits that such difficulties may exist because of NGU's repeated attempts to challenge its contract with UUC under the guise of "bringing [the] relationship forward so that the [Commission] can better understand the relationship of the parties and the agreements which exist between them." [Response at 1.] In fact, NGU made a similar attempt to advance these issues in Docket No. 2006-107-W/S. In that proceeding, UUC was compelled to challenge NGU's attempt to raise the contract in the context of UUC's rate application. As it has in this proceeding, NGU responded then stating, that NGU only sought to "use that contract as a basis for establishing the relationship between the parties..." [Docket No. 2006-107-W/S, NGU June 15, 2006 Response at 1-2.] Despite NGU's assurances that it would not attempt to litigate the contract, and notwithstanding the Hearing Officer's directive in that matter dated August 1, 2006, precluding NGU from relitigating previously decided matters, NGU filed direct testimony

of its witnesses in Docket No. 2006-107-W/S which directly challenged the terms of the contractual agreement.

At bottom, it is illogical for NGU to claim on one hand that it is not asserting issues based upon the meaning of the contract but on the other hand, allege that UUC did not abide by the agreement. NGU's repeated inconsistencies should be taken as an effort to only mask the true purpose of NGU's intervention in this matter which is the relitigation of the issue regarding the rates contemplated by the contract. Furthermore, UUC submits that NGU's previous tactics (reflecting its willingness to ignore the repeated findings of the Commission that the terms of the contract cannot be litigated) demonstrate the need to strike those portions of its petition to intervene in which it once again attempts to raise these issues anew.

II. UNSUBSTANTIATED ARGUMENTS/FAILURE TO CITE AUTHORITY

Even though NGU purports to have abandoned its contractual assertions, NGU continues to aver that the 2001 contract contemplated an agreement that UUC would not raise rates in the immediate future; therefore, UUC is compelled to further respond.

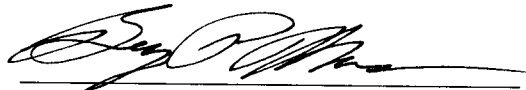
By filing its response to UUC's Motion to Dismiss, NGU now has had five opportunities to present facts supporting the contention that UUC agreed to such an arrangement.¹ Nonetheless, NGU has failed to provide any evidence by affidavit to refute the filed affidavit of UUC's employee regarding this matter. Additionally, UUC submitted a letter from the president of NGU wherein he plainly, directly and unequivocally admits NGU was aware of the 2000 application for an increase in its rates – a letter that was filed with the Commission in that docket **after** UUC and NGU had entered into the contract to transfer the plant.

¹ These opportunities arose when (a) UUC filed its application in Docket No. 2000-210-WS of which NGU had actual notice, (b) when NGU sought to intervene in circuit court C/A No. 02-CP-40-5494, (c) when NGU sought to intervene in Docket No. 2000-210-WS, (d) when NGU filed its Response to UUC's Motion to Dismiss NGU's Petition to Intervene in Docket No. 2006-107-W/S; and (e) NGU's Response filed in the instant Docket.

More importantly, NGU has not provided any legal authority contradicting UUC's assertion that the principles of *res judicata* prevent NGU from interposing its arguments yet again or that UUC's Motion to Strike based upon NGU's failure to state facts sufficient in its Petition is not appropriate. The Commission has already finally determined that NGU is not contractually entitled to a rate different than that approved by the Commission and the principles of judicial economy do not warrant rehashing NGU's incessant contentions otherwise. UUC has already addressed these issues and the Commission has determined them adversely to NGU. To relitigate an already settled issue is improper under *res judicata* in addition to being an unproductive use of the Commission's and the Company's resources necessarily dedicated to addressing such matters.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Commission grant its Motion striking portions of NGU's Petition to Intervene to the extent that it claims that NGU is contractually entitled to a rate other than Commission approved rates on the grounds that such claims are barred by the doctrine of *res judicata* or, alternatively, that such assertions are so defectively stated that they fail to give rise to a claim pursuant to SCRCP 12(c).



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803-252-3300

Attorneys for Applicant

Columbia, South Carolina
This 25th day of February, 2010

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-479-W/S

IN RE:

Application of United Utility Companies,
Inc. for adjustment of rates and charges
and modifications to certain terms
and conditions for the provision of
water and sewer service.

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of the **Reply to NGU's Response to Applicant's Motion to Strike Portions of Petition to Intervene** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
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Janet P. Marks
358 Fairwood Boulevard
Union, SC 29379

Clark Fancher

Clark Fancher

Columbia, South Carolina
This 25th day of February, 2010.